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Supreme Court of the United States

OCTOBER TERM, 1961

No. 518

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW ROCHELLE and ANO.,

Petitioners,

—against—

LESLIE TAYLOR and KEVIN TAYLOR, *et al.*,

Respondents.

PETITIONERS' REPLY

JULIUS WEISS
MURRAY C. FUERST
Counsel for Petitioners

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I

The keystone of Respondents' argument is the finding that the Lincoln School District was "gerrymandered". In the context of this case "gerrymandering" can only mean that the boundary lines of the school district were drawn to exclude whites and include Negroes. The argument leaves one simple but basic question unanswered—Where in the record is the testimony showing the number of white and Negro children residing in the district? Plaintiffs do not point to it for the simple reason that there is no such evidence in the record, and there is no factual support for the crucial finding. The legend on Exhibit L —an official map—shows that in the three decades between 1930 and 1960 the boundary lines of the Lincoln District were altered four different times. Plaintiffs

offered no testimony as to the number of white and Negro residents resulting, and in the absence of such evidence no finding of gerrymandering can stand.

In passing, it should be noted that in the use of the word "segregation" Respondents beg the legal question of constitutionality.

II

Respondents' brief avoids the hard core of the decision which holds that a school in which the Negro-white attendance ratio is 94 to 6 violates the constitutional rights of Negroes. The question of law for this Court to decide is—who is legally responsible for this result? The white parents living in the district who choose not to send their children to a predominantly Negro school or the educational authorities. If the latter, then we ask what wrongful act of the Board sustains the judgment.

Nowhere in the opposing brief do Respondents point to a single piece of evidence in the record to support a conclusion that the failure of more white children to attend Lincoln School in 1960 is due to an act of the Board. In the light of this Court's holding in *Pierce* v. *Society of Sisters*, 268 U.S. 570, what sanctions are available to educational authorities to compel the parents of white children to send their children to the public schools. If the racial ratio of school attendance is 94 to 6, do the educational authorities have the constitutional power to fix a *numerus clausus*. If not, how can Petitioner be held responsible for the imbalance.

III

The argument that the Board of Education did nothing to cure an allegedly earlier abuse is negatived by the explicit finding of the District Court that in 1949 the permissive transfer policy was rescinded and 106 white children previously allowed to attend out-of-district schools were obliged by the Board's new regulation to go to the Lincoln School (R. 138a, 139a).

Respectfully submitted,

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Dated: New Rochelle, N.Y., November 20, 1961